


B104 (FORM 104) (08/07)

EDVA

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)		
PLAINTIFFS Karen Foster	DEFENDANTS Eugene Wingfield, Clerk of the Circuit Court of the City of Lynchburg, Virginia			
ATTORNEYS (Firm Name, Address, and Telephone No.) Gary M. Bowman 2728 Colonial Ave., Ste. 100 Roanoke, VA 24015 (540) 343-1173	ATTORNEYS (If Known)			
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input checked="" type="checkbox"/> Other <input type="checkbox"/> Trustee			
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Turn-over to the debtor-in-possession \$20,000.00 held by defendant, Wingfield, as surety for the benefit of defendant John L. Wynne				
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)				
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input checked="" type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div> </td> <td style="width: 50%; vertical-align: top; border: none;"> FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case) </td> </tr> </table>			FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input checked="" type="checkbox"/> 12-Recovery of money/property - §547 preference <input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input type="checkbox"/> 14-Recovery of money/property - other FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h) FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e) FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny <div style="text-align: center;">(continued next column)</div>	FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
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<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23			
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ Turn-over \$20,000.00			
Other Relief Sought				

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BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Karen M. Foster		BANKRUPTCY CASE NO. 12-60619
DISTRICT IN WHICH CASE IS PENDING Western		DIVISION OFFICE Lynchburg
		NAME OF JUDGE Judge Anderson
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING		DIVISION OFFICE
		NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE April 4, 2012		PRINT NAME OF ATTORNEY (OR PLAINTIFF) Gary M. Bowman

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 104, the Adversary Proceeding Cover Sheet, *unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

*Per LBR 7003-1, in the EDVA, a properly completed Adversary Proceeding Cover Sheet is required.

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

Lynchburg Division

In re: KAREN FOSTER, Debtor.	Chapter 11 Case No. 12-60619
KAREN FOSTER, Plaintiff, v. EUGENE WINGFIELD, Clerk of the Circuit Court of the City of Lynchburg, Virginia, and JOHN L. WYNNE, Defendants.	Adversary Proceeding No. 12-_____

COMPLAINT

COMES NOW the debtor-in-possession, by counsel, who requests that this Court require the defendant Eugene Wingfield, the Clerk of the Circuit Court of the City of Lynchburg, Virginia, to turnover to the debtor-in-possession \$20,000.00 held by defendant Wingfield as surety for the benefit of defendant John L. Wynne.

PERSONAL JURISDICTION

1. The plaintiff, Karen Foster, is a citizen of Lynchburg, Virginia.

2. The defendant, Eugene Wingfield, is the Clerk of the Circuit Court of Lynchburg, Virginia.

3. The defendant, John L. Wynne, is a citizen of Lynchburg, Virginia.

SUBJECT MATTER JURISDICTION

4. The plaintiff filed a Chapter 11 petition in this Court on March 15, 2012.

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 because this is a matter arising in bankruptcy.

6. This is a core proceeding because it is an recover property of the estate.

STATEMENT OF FACTS

7. The defendant John L. Wynne filed Case No. CL10004795-00 in the Circuit Court of the City of Lynchburg to eject the debtor-in-possession from real property at 2232 Ridgewood Drive, Lynchburg, Virginia.

8. The plaintiff, who is now the debtor-in-possession, filed Case No. CL10005362-00 in the Circuit Court of the City of Lynchburg alleging that defendant Wynne's conduct, and the conduct of Peter Sackett, the attorney who conducted the foreclosure sale, was invalid.

9. Prior to the filing of the petition, the Lynchburg Circuit Court issued an Order allowing the plaintiff (now debtor-in-possession) to remain in possession of the premises at 2232 Ridgewood Drive, but required her to post a surety bond with defendant Wingfield as security for any rent obligation due from

the debtor-in-possession to Wynne while she remained in possession of the 2232 Ridgewood Drive.

10. At the time of the filing of the petition, defendant Wingfield was in possession of \$20,000.00 which the plaintiff (now debtor-in-possession) posted as surety.

CLAIMS FOR RELIEF

COUNT ONE

(TURNOVER BY A CUSTODIAN PURSUANT TO 11 U.S.C. § 543)

11. The allegations of paragraph 1-10 are adopted herein.
12. The \$20,000.00 cash is being held by defendant Wingfield as custodian.
13. The cash was paid to defendant Wingfield by the plaintiff (now debtor-in-possession).
14. Title to the cash has not vested in defendant Wingfield. He is a custodian of the cash as described in 11 U.S.C. § 543.
15. Title to the cash has not vested in defendant Wynne.
16. The cash is property of the bankruptcy estate pursuant to 11 U.S.C. § 541.
17. The debtor-in-possession made demand upon defendant Wingfield for turnover of the cash. Wingfield failed to respond to the demand for turnover.

WHEREFORE the debtor-in-possession prays that this Court will enter an Order pursuant to 11 U.S.C. § 543, to require defendant Wingfield to:

(a) deliver to the debtor-in-possession the cash held by him, posted as surety by the debtor-in-possession, in Case Numbers CL10004795-00 and CL10005362-00, as required by 11 U.S.C.

§ 543(b)(1);

(b) file an accounting of the property of the debtor-in-possession as required by 11 U.S.C. § 543(b)(2).

Respectfully Submitted,

KAREN FOSTER

By: 

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